VISVASAM v. SATHASIVAM

[D.C.A. (Chua J.) September 25, 1979]

[Singapore — District Court Appeal No. 37 of 1977]

Contract — Claim for payment under — Duress — Contract made under duress — Illegal and unenforceable — Appeal — No reason to interfere with findings of trial judge.

The appellant in this case claimed a sum of $4,200 alleged to be due to him by the respondent under a document in writing and made under seal of July 20, 1973 whereby the respondent had agreed to pay the appellant the sum of $600 per month during the appellant's lifetime and thereafter to pay the stated sum to the appellant's wife and children so long as the respondent had a toddy contract with the government. The respondent admitted the execution of the said agreement but contended before the trial court that the said agreement was unenforceable because it was made without any lawful consideration and that it was made under duress. The trial judge held in favour of the respondent. The appellant appealed.

Held, dismissing the appeal: there was no reason to interfere with the finding of facts by the trial judge who had heard and seen the witnesses and who was quite right in deciding that the said agreement was executed under duress and was the result of undue influence by the appellant.

DISTRICT COURT APPEAL.

P. Suppiah for the appellant.

Leo Fernando for the respondent.

Cur. Adv. Vult.

Chua J.: The appellant claimed a sum of $4,200 alleged to be due to him by the respondent under a document in writing made under seal dated July 20, 1973, (the said agreement) between the appellant and the respondent wherein the respondent agreed to pay the appellant the sum of $600 per month, for the reason therein stated, during the appellant's lifetime and thereafter to pay the stated sum to the appellant's wife and children so long as the respondent has a toddy contract with the Government. The reason stated in the said agreement is this:

"Whereas the Contractor (respondent) is a Government Toddy Contractor and the Manager (the appellant) has over the last seven years assisted the Contractor to build up his business and is still assisting him in carrying on the business."

The appellant alleged that the respondent had defaulted in the payment of $600 per month since September 1975. The appellant further claimed against the respondent a sum of $645 being his wages from May 1, 1975, to August 7, 1975, at $200 per month.

The respondent admitted the execution of the said agreement but contended before the trial court that the said agreement was unenforceable for the following reasons: —

(a) the said agreement was made without any or any lawful consideration;

(b) there was "unlawful purpose or object behind the said agreement.";

(c) the said agreement was illegal as it offended against fundamental principle of law and/or order or morality and/or it is contrary to public policy; and

(d) the respondent was induced to make the said agreement by duress and/or undue influence on the part of the appellant.

The trial judge held, *inter alia*, that the said agreement was executed under duress and was the result of undue influence used by the appellant. The main ground of appeal is that the trial judge was wrong in his finding.

The facts as found by the District Judge are these. In July 1965, the respondent tendered to the Customs & Excise Department to supply toddy to three Government toddy shops. The acceptance of the tender was conditional on the respondent retaining the existing labour force employed by the previous contractor. In October 1966, the respondent was informed that his tender had been accepted and thereupon he wrote to the previous contractor, Rasoo Shanmugam, and to the Toddy Tappers' Union (the Union) requesting the services of 20 toddy tappers so that a number of trees could be prepared for tapping when his contract commenced on January 1, 1967. The respondent was unable to obtain the 20 tappers from either source. As a consequence the respondent ran the risk of having his contract terminated and his deposit of $5,000 forfeited as he might not be able to supply the required amount of toddy.

The respondent subsequently met a friend, P. Shanmugam, who introduced him to the appellant. Through the appellant the respondent was able to engage 20 tappers, although he needed 56 tappers in order to discharge his obligations under the contract.

The respondent's contract commenced on January 1, 1967, but the work force who had served under the previous contractor failed to turn up for work. As a result there was short delivery of toddy and on January 11, 1967, the respondent was informed by letter by the Comptroller of Customs & Excise that his contract would be terminated on January 14, 1967. However, as a result of the respondent's pleas he was allowed to supply half of the amount of toddy that he had contracted to supply and he lost the other half of the contract. By that time the respondent had invested about $28,000 in the toddy contract and it was imperative that he made every attempt to supply the amount of toddy that he had contracted to supply. He was therefore compelled to recruit 9 toddy tappers from Malaysia and, to avoid getting work permits for them, he paid them $750 per month. At this time the respondent was paying the appellant an honorarium of $300 per month for helping him.

In 1968 after the appellant had obtained his work permit, his salary as a mandore was raised at his request. Subsequently the appellant requested another raise to which the respondent said he would consider the matter and reminded the appellant of his own losses in the business.

One morning in May 1969, the respondent's toddy tappers only tapped five pints each that morning, when their quota was about 7 to 8 gallons each. That morning the appellant was absent from work. The tappers refused to give a reason for their short supply and requested the respondent to see the appellant about it. It is clear from the evidence of one of the tappers (K. Karuppiah DW4) that the appellant had instructed them to bring down less toddy in the morning as he said there ought to be an increase in pay. The appellant then informed the respondent that if he agreed

to pay him $500 per month the usual amount of toddy would be supplied. Fearing that his contract would be cancelled again and that the trees would be spoilt if they were not regularly tapped, the respondent agreed to give the appellant the raise. On the same evening the required amount of toddy was tapped by the tappers.

From September 1972, the respondent took over the whole toddy contract and also employed all the union labour.

The position was that between 1967 to September 1972, when the respondent took over the whole contract, the appellant did not assist the respondent in his business in any manner other than working for him as a mandore or supervisor. The appellant did not assist the respondent in obtaining his contract or in retaining half his contract, nor did he advance any money for the running of the business. The only thing the respondent had done was to introduce 20 tappers most of whom were his relatives or persons belonging to his caste and to supervise them.

When the respondent took over the whole toddy contract in September 1972, he had two groups of workers employed by him. There was a large labour force consisting of members of the Union and there were tappers introduced by the appellant who were non-union members. The appellant had been previously expelled from the Union and continued to be a *persona non grata*. Although the appellant had been reinstated as a union member, on a High Court order, his relationship with the Uuion was strained; he resented the Union leadership.

The Union was at this date agitating for a new collective agreement to be signed between the Union and the respondent and threatened the respondent with industrial action. The respondent was also contractually bound to retain the union labour.

In early 1973 the appellant requested the respondent to enter into an agreement with him so that the appellant's interest in the toddy contract could be safeguarded. The appellant feared that if a collective agreement, which was imminent, was entered into between the respondent and the Union, the appellant's position would be jeopardised. At this point of time the Union supervisors were being paid only $275 per month whilst the appellant was earning as much as $800 per month.

On April 25 or 26, 1975, the appellant and 4 others went to Vandamuthu Arokiam's house and assaulted Vandamuthu Arokiam who was one of the union tappers. The trial judge said:

"It is clear from the evidence of assault by Vandamuthu Arokiam (DW 5) and the evidence as regards the 1969 incident that the plaintiff had both the propensity and capacity to cause violence and labour unrest."

What finally made the respondent decide to sign the said agreement was an incident which occurred on July 10, 1973, 10 days before he signed the said agreement. His car was stopped by the appellant and two others and the appellant informed the respondent that if he did not sign the said agreement, he would be beaten up and that his contract would also be affected and he was reminded of the 1969 incident when the appellant had instructed the 20 tappers under his control to tap less toddy.

The respondent did not wish to incur further labour problems which might result in his losing his contract or part of it for the second time, as he had by September 1972, invested some $63,000 in the toddy supply contract. Under his contract with the Customs & Excise Department the respondent could be penalised even if the daily supply of toddy was less than the agreed amount. He also did not wish to "take on" both sides of his labour force at the same time.

The collective agreement was eventually signed on November 25, 1975, but it was to take effect from September 1, 1973. In the collective agreement the supervisors' salary was fixed at $275 per month. It was also provided that employees who were not union members "shall not enjoy more favourable terms than those provided in this agreement."

Counsel for the appellant submits that the respondent has failed to prove that there was duress or undue influence.

Counsel says that if the respondent felt that the said agreement was unenforceable for duress he should have applied to have the said agreement set aside after it was executed. He did not do so but continued to honour the said agreement for twenty-five months and when the appellant sued him he put up all sorts of equitable defences.

The respondent has given an explanation why he continued to pay the appellant $600 p.m. under the said agreement. He said he had to do so as he had trouble with the Union and he did not want to have any misunderstanding with the appellant. He dismissed the appellant in April 1975, only after his tapper Vandamuthu Arokiam was assaulted by the appellant. When he sought legal advice he was advised not to pay.

It is contended that the effect of the evidence of Mr. Y. Jumabhoy, the solicitor who acted for both the appellant and the respondent in respect of the said agreement, is that there was no duress. The short answer to that is that Mr. Jumabhoy was not aware of the events that had taken place prior to the signing of the said agreement. If the respondent had told Mr. Jumabhoy about the incident of July 10, 1973, the appellant would have withdrawn his twenty tappers.

Counsel for the appellant submits that the evidence relied upon by the respondent to establish that he was induced to sign the said agreement by duress does not establish duress. Counsel says that the incident of April 30, 1969, when the tappers produced only 5 pints of toddy per person on the instruction of the appellant is not only not true but took place some 4 years before the signing of the said agreement and that the incident of July 10, 1973, when the respondent's car was stopped by the appellant and two others and the respondent was threatened by the appellant is the creation of the respondent and is not true.

I see no reason to interfere with the finding of facts by the trial judge. He has heard and seen the

witnesses and he accepted the evidence given by the respondent and his witnesses.

The trial judge was quite right in deciding that the said agreement was executed under duress and was the result of undue influence used by the appellant.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *P. Suppiah & Co.; Leo Fernando.*

GOODYEAR INVESTMENTS PTE. LTD. v. B.A. LALWANI & ANOR. (THIRD PARTY)

[O.C.J. (Rajah J.) September 26, 1979]

[Singapore — Suit No. 557 of 1977]

Land Law — Land owned by third party — Demolition of building on land on May 30, 1971 — Failure to notify Chief Assessor — Sale of land by third party to defendant on November 6, 1972 — Defendant agreeing to sell land to plaintiffs — Completion date on July 2, 1973 — Land to be free from encumbrances — "Outgoings" before date of completion to be discharged by defendant/vendor — Notice by Assessor of increased value of property of $136,480 with effect from January 1, 1974 — Property Tax imposed by Comptroller for period May 30, 1971 to said date of completion based on proposed value of $136,480 — Claim by plaintiffs against defendant for breach of contract — Whether said tax levied by Comptroller was an encumbrance or outgoing on the land — Property Tax Act (Cap. 144), ss. 4(2) & (3), 6(1) to (3), 9(1) & (2), 13, 17(6), (7) & (12), 18(6)(a).

Property Tax — Power of Chief Assessor to amend retrospectively only current valuation list — Scope of s. 17(7)(b) of Property Tax Act (Cap. 144) — Effect of retrospective taxes levied by Comptroller — Property Tax Act (Cap. 144), ss. 4(2) & (3), 6(1) to (3), 9(1) & (2), 13, 17(6), (7) & (12),

The property in question in this case was a piece of freehold land known as Nos. 83 and 85 Cavenagh Road on which stood two buildings. The property tax for 83 and 85 Cavenagh Road was based on an annual value of $2,148.00 and of $4,800 respectively. On May 30, 1971, the then owner of the said land, a third party, demolished the two houses. No notice of the said demolition, however, was given to the Chief Assessor as required by section 17(6) of the Property Tax Act (Cap. 144) (hereinafter referred to as the said Act).

On October 5, 1972, the said land was sold by public auction to the defendant, less a scaled area of approximately 11,550 sq. ft. which had previously been surrendered to the Government, for the sum of $1,400,000. Completion of the purchase was to take place on November 6, 1972.

On May 28, 1973, the defendant entered into an agreement in writing to sell the said land to the plaintiffs free from encumbrances for $2,729,650. The sale was subject to "The (Revised) Singapore Conditions of Sale", Condition 6 of which provided that outgoings would be discharged by the vendor down to the day fixed for completion. Completion of the auction sale took place on July 2, 1973. A Notice of Transfer under section 17(1) of the Act, dated July 12, 1973 was sent to the Chief Assessor.

The Comptroller of Property Tax served on the plaintiffs a notice under section 17(7)(b) of the said Act dated July 1, 1974 together with a notice, also dated July 1, 1974, from the Chief Assessor under section 18(2) of the said Act. By his Notice the Chief Assessor sought to amend the 1974 Valuation List by increasing the then current annual value of the said land from $2,148 and $4,800 to $136,480 with retrospective effect from January 1, 1974. The Comptroller sought to charge property tax on the said land based on the Chief Assessor's proposed annual value (not on the revised annual value as required by section 17(7)(b)) of $136,480 for the period May 30, 1971, the date of the demolition of 83 and 85 Cavenagh Road, to December 31, 1973. To arrive at the proposed annual value, the Chief Assessor had treated the said land as vacant, as indeed it had been since May 30, 1971, and its value at $2,729,650 as shown in the said Notice of Transfer. By his notice the Comptroller claimed the tax payable, based on the proposed annual value of $136,480 for the period of May 30, 1971 to December 31, 1974 to be $176,323.35.

The plaintiffs/purchasers did not object under section 18(3) of the said Act to such amendment and paid the tax. The Chief Assessor acting under section 18(6)(a) of the Act amended the 1974 Valuation List to include the said land in accordance with the notice of proposed amendment with effect from January 1, 1974.

On October 31, 1974 the plaintiffs through their solicitors, made demand on the defendant for payment of the sum of $102,624.15 being the amount of the tax payable for the period May 30, 1971 to July 2, 1973 (the date of completion). The present action was brought against the defendant for breach of agreement in not conveying the said land free of encumbrances and/or discharged of all outgoings.

Held, dismissing the plaintiffs' claim: (1) it is clear from the Property Tax Act (Cap. 144) that the Chief Assessor has no powers to amend any previous Valuation List retrospectively. His powers to amend retrospectively only relate to the current Valuation List and do not go further;

(2) in the circumstances of the case, the Comptroller's notice was premature and therefor of no effect in creating a liability to tax under section 17(7)(b) of the said Act;

(3) under the Act, only taxes levied by the Chief Assessor become a first charge on the properties concerned, whereas retrospective taxes levied by the Comptroller under section 17(7)(b) are not taxes chargeable on the properties concerned and can only be recovered by actions *in personam;*

(4) if, on the other hand, a tax under section 17(7)(b) of the said Act is a chargeable tax under the Act, and therefore an encumbrance on the said land on the date the said land was conveyed to the plaintiffs, there was no encumbrance on the said land on July 3, 1973 as on the facts of the instant case the liability to tax could not have arisen before July 1, 1974, the date of the Comptroller's purported notice;

(5) for there to be an outgoing, either the vendor must have incurred a liability or expense or a local or other authority must have incurred an expense in respect of the property before the date fixed for completion of the sale. In the instant case the sum of $102,624.15 was neither a liability nor an expense which the defendant had incurred in respect of the said land up to the date fixed for completion, namely June 17, 1973. It follows therefor that the sum of $102,624.15 was not an outgoing within the meaning of Condition 6.

Cases referred to:-

(1) *Midgley* v. *Coppock* (1879) 4 Ex. D. 309.

(2) *Corporation of Sunderland* v. *Alcock* (1882) 51 L.J. Ch.D. 546.

(3) *In re Bettesworth and Richer* (1888) 37 Ch. 535.

(4) *Hornsey Local Board* v. *Monarch Investment Building Society* (1890) 24 Q.B.D. 1.

(5) *Stock* v. *Meakin* [1900] 1 Ch. 683.

(6) *Tubbs* v. *Wynne* [1897] 1 Q.B.D. 74.

CIVIL SUIT.

S.M. Hwang for the plaintiffs.

Sat Pal Khattar for the defendant.

J.B. Jeyaretnam for the third party.

Cur. Adv. Vult.

Rajah J.: By virtue of the Secretary of the Synod of the Diocese of Singapore Ordinance, 1959 (Ordinance 37 of 1959) a piece of freehold land, in area 72,328 sq. ft. and marked on the Government Resurvey Map as Lot 106[6] T.S. XXVII on which had been erected Cathedral House, 83 Cavenagh Road and Cathedral Cottage, 85 Cavenagh Road, became vested